

(c) Motions for summary judgment may be considered by the Board. However, the Board may defer ruling on a motion for summary judgment, in its discretion, until after a hearing or other presentation of evidence. Motions for summary judgment may be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief as a matter of law. The parties are to consider proceeding by submission of the case without a hearing in accordance with § 955.12, in lieu of a motion for summary judgment.

(1) Motions for summary judgment shall include a separate document titled *Statement of Uncontested Facts*, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to affidavits, declarations and/or documents relied upon to support such statement.

(2) The opposing party shall file with its opposition a separate document titled *Statement of Genuine Issues*. This document shall identify, by reference to specific paragraph numbers in the moving party's *Statement of Uncontested Facts*, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement, and support its opposition with references to affidavits, declarations and/or documents that demonstrate the existence of a genuine dispute.

(3) The moving party and the non-moving party shall each submit a memorandum of law supporting or opposing summary judgment.

(4) If, despite reasonable efforts, the opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may issue such other order as is just. The parties should not expect the Board to search the record for evidence in support of either party's position.

[74 FR 20592, May 5, 2009, as amended at 76 FR 37660, June 28, 2011]

**§ 955.7 Pleadings.**

(a) *Appellant*. Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon the appellant's request or on the Board's own initiative, the appellant's claim, notice of appeal or other document may be deemed to constitute the complaint if in the opinion of the Board the issues before the Board are sufficiently defined.

(b) *Respondent*. Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant, and shall serve the appellant with a copy. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within the time required, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the appellant shall be so notified.

(c) *Affirmative claims by the respondent*. Where an appellant has appealed an affirmative claim by the respondent asserted in a final decision by a Postal Service contracting officer, such as a termination for default or a Postal Service claim that a contractor owes the Postal Service money under a contract, the Board may order the respondent to file the complaint as described in § 955.7(a), and the appellant to file the answer as described in § 955.7(b).

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